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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 426.

JESSE BLACKBURN,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

BRIEF FOR THE PETITIONER.

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OPINIONS BELOW.

The opinion of the Circuit Court of Colbert County, Alabama, is unreported. The opinion of the Court of Appeals of Alabama (R. 240) is reported at 88 So. 2d 199. The decision of the Supreme Court of Alabama refusing to grant the petition for certiorari (R. 252) and its decision denying the application for a rehearing (R. 254) is reported at 264 Ala. 694, 88 So. 2d 205.

JURISDICTION.

The judgment of the Court of Appeals of Alabama was rendered on November 16, 1954 (R. 240). Petitioner applied to the said Court of Appeals for a rehearing, which was denied (R. 250). Petitioner thereupon petitioned the Supreme Court of Alabama for a writ of certiorari to review the judgment of the Court of Appeals of Alabama. The petition for certiorari was denied on April 12, 1956. Petitioner made application for rehearing to the Supreme Court of Alabama. This application was denied on June 21, 1956 (R. 254). This action of the Supreme Court of Alabama made final the judgment of the Court of Appeals of Alabama, and the state remedies for petitioner were exhausted.

Petition for certiorari was filed in the Supreme Court of the United States on September 15, 1956, and was granted December 3, 1956. The jurisdiction of this Court rests on 28 U. S. C., Sec. 1257.

In the trial court petitioner repeatedly objected to the efforts of the State of Alabama to introduce into evidence his alleged confession. Petitioner objected that the confession was not voluntary and that petitioner lacked the mental competence to make a voluntary confession (R. 32, 106, 113, 137). The trial court admitted the confession into evidence and petitioner excepted to the ruling of the trial court (R. 106, 107).

The question of the voluntary nature of the confession was fully presented and ruled upon by the trial court on the motion for new trial. It was argued to the Alabama courts in seeking appellate review. The Court of Appeals of Alabama stated (R. 247):

> "Of course, the duty of determining whether a confession is voluntary rests within the discretion of the

trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears. We conclude the wide discretion vested in the court is not shown here to have been abused and there was no error in admitting the confession in evidence."

CONSTITUTIONAL PROVISIONS INVOLVED.

Section 1 of the 14th Amendment of the United States Constitution is involved:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTION PRESENTED.

1. Does a conviction based on a confession obtained after nine hours of relay questioning from one over leave from an insane hospital and adjudged mentally incompetent at the time of his release from said hospital and subsequently adjudged insane by the sanity board appointed by the State of Alabama to examine him and adjudged probably insane at the time of his confession by members of the same sanity board, offer that fundamental fairness required by the due process of law clause of the 14th Amendment of the Constitution of the United States?

STATEMENT OF THE CASE.

Petitioner was charged with the capital offense of robbery. He pleaded not guilty and not guilty by reason of insanity. He was tried, convicted and sentenced to twenty years imprisonment. His conviction was based on an alleged confession, which petitioner has contended at every stage of his trial and appeal was involuntary (R. 32, 106, 113, 137, 251).

Petitioner is a young Negro, 25 years of age at the time of his alleged crime on April 19, 1948. The record indicates that he had no involvement with the law prior to the charges brought against him in this case. He had been in the armed forces during World War II and was discharged in 1944 as unfit for military service because of a "permanent" mental disability (R. 143, 144, 145). Pursuant to the recommendation of the Army Medical Board, petitioner was transferred to an insane hospital with a diagnosis of dementia praecox, simple type, and a history of hallucination and defective judgment and insight (R. 146, 147).

Petitioner remained under treatment in this hospital from September, 1944, until February, 1948. In September, 1944, petitioner was adjudged 50% mentally incompetent (R. 155, 156). In November, 1946, he was adjudged 100% mentally incompetent (R. 156). On February 14, 1948, he was released from the hospital for a ten-day leave in the care of his sister. When he did not return from this leave he was automatically discharged from the hospital on May 24, 1948. His medical record states that on his discharge "the diagnosis of schizophrenic reaction, paranoid type, remains unchanged, and he was considered incompetent at the time of his release" (R. 150).

In April, 1948, while petitioner was several days over leave from the insane hospital, he left his home in Illinois to attend his brother's funeral in Alabama. The crime with

which petitioner was charged occurred while he was on this trip to Alabama.

Petitioner was arrested in Indiana and was brought to Colbert County, Alabama. On May 8, 1948, he allegedly confessed to the crime for which he was convicted. The crime was a brutal one committed in a rural area and involved armed assault on the white operator of a rolling country store. One of the deputy sheriffs, who questioned petitioner and who wrote the alleged confession, testified that petitioner "talked sensible" at the time of his confession (R. 105). This same deputy conceded that thereafter while petitioner was still in jail awaiting trial he observed the behavior of the petitioner which "showed signs of insanity" (R. 103). The Sheriff of Colbert County reported to the Circuit Judge of Colbert County that there existed reasonable grounds for believing petitioner insane (R. 2). The Circuit Judge had petitioner examined as to his sanity by three reputable local physicians and other witnesses, all of whom concurred in the view that there was reasonable ground for believing petitioner insane (R. 2).

Petitioner was thereupon, on July 26, 1948, delivered to the Superintendent of the Alabama State Hospitals, who was directed to convene a commission of lunacy to determine petitioner's mental condition. On January 6, 1949, the lunacy commission made a unanimous adjudication that petitioner was insane at the time he was delivered to the state mental hospital in July, 1948 (R. 5, 41, 42). The Commission was further unanimous in its judgment that petitioner "was insane at the time of the commission of the crime for which he is charged" (R. 5). Two of the three doctors composing the commission on lunacy stated that in their opinion he was "most probably insane" or "mentally ill and mentally incompetent" on May 8, 1948 (R. 50, 67), this being the date of the alleged confession. One of the doctors stated that the three doctors on the sanity commission were of the opinion that petitioner was

mentally incompetent from January 1, 1948, to July 29, 1948 (R. 63). The testimony of the third doctor on the commission was somewhat confused. He testified, however, that he did not think petitioner had lucid intervals (R. 82). He also testified that petitioner was probably insane on April 19, 1948 (R. 77), but on cross-examination he stated that he thought petitioner's mental condition on April 19, 1948, was normal (R. 83).

On the findings of the commission of lunacy the Circuit Court of Colbert County "permanently" committed petitioner to the Alabama State Hospital for treatment of the insane until "restored to his right mind" (R. 62). Under this order of the Circuit Court, petitioner remained under treatment in the insane hospital for more than four years, from July, 1948, to November 12, 1952, at which time he was adjudged mentally competent to stand trial and was returned to Colbert County (R. 68, 69). At the time of petitioner's trial he had spent his entire adult life in an insane hospital except for a few weeks of absence without leave.

Petitioner testified that he had no recollection of events leading up to the alleged crime, the crime itself, his arrest in Indiana, his detention in the Colbert County jail, his confession, his commitment to the Alabama State Hospital, or the early months or years of treatment at said hospital (R. 193, 194, 195). Petitioner denied the truth of the confession, acknowledged that the signature on the confession appeared to be his, but stated that he could not recall anything about it. Petitioner's prior medical history attested that he had for many years suffered recurrently from "complete amnesia concerning his behavior" (R. 144).

Petitioner's alleged confession on May 8, 1948, was obtained after nine or ten hours of questioning by one or more law enforcement officers who were coming "in and out" (R. 102, 103). The questioning was uninterrupted

except for a break of approximately one hour while the examining officers went to supper (R. 102). Most of the questioning took place in a room four feet by six feet or six feet by eight feet, in which were petitioner and as many as three law enforcement officers (R. 102). The law enforcement officers could not recall whether they were wearing or exhibiting their guns at the time of the questioning (R. 104). Petitioner allegedly confessed at approximately eleven o'clock at night (R. 102).

Petitioner objected to the introduction into evidence of the alleged confession on the ground that it was not voluntary, that it was not shown that petitioner had the mental capacity to be a witness, that it affirmatively appeared that petitioner was insane at the time of the making of the alleged confession (R. 32, 33, 106, 107). These objections to the introduction of the confession were repeated many times at the trial (R. 32, 106, 113, 137). Despite petitioner's objections, the trial court admitted the confession into evidence and made the determination that the confession was voluntary. Based on the alleged confession, a conviction was obtained and petitioner was sentenced to serve twenty years in prison.

In the Court of Appeals of Alabama petitioner argued that the trial court committed reversible error in admitting the alleged confession. The Court of Appeals affirmed the conviction, stating that the duty of determining whether a confession is voluntary rests within the discretion of the trial court, "and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears." **Blackburn v. State**, ... Ala. App. ..., 88 So. 2d 199, 205. The Court of Appeals concluded by stating that the wide discretion vested in the trial court was not shown to have been abused and there was no error in admitting the confession in evidence. The further efforts of petitioner to get this decision reviewed in the state courts were unsuccessful.

ARGUMENT.

This case raises fundamental and important questions as to the protection extended by the Fourteenth Amendment of the Constitution of the United States to incompetent or insane persons whose convictions rest on alleged confessions obtained while such persons were suffering from insanity or mental incompetency.

All of the facts concerning petitioner's alleged confession were supplied by the deputy sheriff who obtained such confession (R. 99, et seq.). Petitioner had no recollection about the confession or of anything for a period of time extending from prior to the commission of the crime at issue until several months after his confinement for treatment in the Alabama hospital for the insane (R. 193, 194, 195). His inability to recall these events is consistent with petitioner's prior medical history, which reveals that he had suffered recurrently for many years from "complete amnesia concerning his behavior" (R. 144). According, therefore, to the testimony of the deputy sheriff, petitioner's confession was obtained after nine or ten hours of questioning by one or more law enforcement officers who were coming "in and out" (R. 102, 103). The deputy stated that the only interruption in the relay questioning from one o'clock in the afternoon until ten or eleven o'clock at night was approximately one hour while the questioners ate supper (R. 102).

Most of the questioning took place in a room at the jail, which the deputy testified was four feet by six feet or six feet by eight feet (R. 102). For the greater part of the time petitioner was in this room with only one law enforcement officer, but at times all three officers were in the room for the purpose of examining petitioner.

If petitioner had been a person of normal will or mind, such a confession would be of doubtful validity when care-

fully considered against the challenge of the due process requirements of the Fourteenth Amendment. **Harris v. South Carolina**, 338 U. S. 68, 71; **Watts v. Indiana**, 338 U. S. 49; **Turner v. Pennsylvania**, 338 U. S. 62. Nine or ten hours of sustained questioning by relays of law enforcement officers does not suggest that the State has repelled "the imputation of undue influence," **Bonner v. State**, 55 Ala. 242, 245, 246—even where the prisoner was of normal will or mind. But in this case, this petitioner was not such a person.

He was a young Negro, 25 years of age at the time of his alleged crime on April 19, 1948. When he left his home in Illinois to come to his brother's funeral in Alabama, he was over leave from a United States Government insane hospital. He had been in government insane institutions since 1944 when he was discharged from the armed forces because of a permanent mental disability (R. 143, 144, 145). He had been rated by such hospitals as "100%" mentally incompetent from November 22, 1946.

When petitioner did not return from the ten-day leave in the care of his sister, which leave commenced on February 14, 1948, he was automatically discharged from the hospital. His medical records stated that at the time of his discharge "the diagnosis of schizophrenic reaction, paranoid type, remains unchanged, and he was considered incompetent at the time of his release" (R. 150).

It is significant that the doubts as to petitioner's sanity were not raised first as legal defenses by petitioner or his counsel; they were raised by the sheriff and the jailer into whose custody petitioner had been placed (R. 103, 104). Although these people were untrained in the detection of mental disorders it became apparent to them as well as to the deputy that took petitioner's confession that petitioner showed "signs of insanity" (R. 103, 104). They called this fact to the attention of the Circuit Court.

The Circuit Court thereupon had petitioner examined by three local doctors and certain lay persons. Everyone who examined petitioner agreed that there was reasonable ground for believing petitioner insane. The Court accordingly placed petitioner in the custody of the Superintendent of the Alabama State Hospitals and directed the Superintendent to appoint two other doctors to serve with him on a lunacy commission to determine the mental condition of petitioner.

The lunacy commission officially reported to the Circuit Court its unanimous opinion that petitioner was insane and incompetent when placed in the custody of the Superintendent of the Alabama State Hospitals in July, 1948, and further that he was insane on April 19, 1948, being the time of the commission of the crime for which he was charged (R. 5). The doctors on the lunacy commission were also of the opinion that petitioner was mentally ill and incompetent from January 1, 1948 to July 29, 1948 (R. 63). This period includes the date of his alleged confession on May 8, 1948.

On the basis of the report of the lunacy commission, the Circuit Court "permanently" committed petitioner to an Alabama insane hospital for treatment until "restored to his right mind" (R. 62). The severity of petitioner's mental derangement may be judged by the fact that he was not restored to "his right mind" until he had undergone more than four years of treatment while confined in an Alabama insane hospital—from July, 1948 to November 12, 1952. At the time of petitioner's trial he had spent substantially his entire adult life in insane institutions—more than eight years.

In April, 1949, Dr. Moorer, a neuropsychiatrist for the State of Alabama, examined petitioner and diagnosed him as a schizophrenic, paranoid type, insane, incompetent, and recommended that he should be placed in an

insane hospital (R. 154). Everyone of the more than half dozen doctors that examined petitioner from 1944 to 1949 diagnosed him as insane and mentally incompetent.

Although in 1948 admittedly petitioner was of such unsound mind that he could not stand trial, even with the assistance of court appointed counsel, four year later he was pronounced restored to sanity and then tried and convicted on a statement given without the advice of counsel or the protection of a court and during a time when all medical opinion agreed that he was insane (R. 63).

For hundreds of years due process of law has required that the insane be protected from criminal trial during their insanity. The Alabama courts respected this requirement. But the Alabama courts allowed petitioner to be convicted on a statement sucked out of him after nine or ten hours of relay questioning at a time when petitioner was insane. Surely if due process of law protects a defendant from being tried while mentally incompetent, it protects him from being convicted on a statement obtained after many hours of prolonged questioning while the defendant was mentally incompetent.

Under the law of Alabama, confessions are prima facie inadmissible; the state has the burden of affirmatively showing that the confession was voluntarily made. **Bonner v. State**, 55 Ala. 242, 245, 246; **McCullars v. State**, 208 Ala. 182, 94 So. 55; **Baird v. State**, 215 Ala. 27, 109 So. 161. The trial judge in Alabama has the duty of determining whether the confession was voluntary. **Hines v. State**, 260 Ala. 668, 72 So. 2d 296.

In this case the Alabama Court of Appeals stated that such broad discretion is vested in the trial court in determining whether a confession is voluntary that it could not find an abuse of discretion in its admission (R. 247).

We have then a judicial decision that petitioner's confession was voluntary as a matter of law.

Whatever test of voluntariness was applied by the Alabama courts, we submit it was a different test than that compelled by the decisions of this Court in construing the due process requirement of the Constitution.

This Court has made it clear that the test of whether a confession offends Constitutional due process is different for the normal defendant and the mentally deranged. In **Stein v. New York**, 346 U. S. 156, 185, this Court stated:

> "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal."

In the **Stein** case, this Court emphasized that those defendants "were not young, soft, ignorant or timid. They were not inexperienced in the ways of crime or its detection, nor were they dumb as to their rights."

Apply the plain implication of this language to petitioner. Petitioner was only twenty-five years old at the time of his arrest. He had spent all of his adult life in a government insane hospital, except for the period during which the alleged crime was committed when petitioner was over leave from the insane hospital. The records of the insane hospital showed that he was adjudged 100% mentally incompetent and insane at the very time of his arrest and alleged confession. What was "the power of resistance" of such a defendant? So far as appears this was the first involvement petitioner had ever had with criminal procedures. He was as inexperienced and as ignorant of his rights as the prisoners in the **Stein** case were otherwise.

The Alabama Supreme Court has itself recognized this general principle—that a different test is required for the mentally weak.

> "Manifestly, if the defendant is of tender age or weak intellect, his will may be the more easily overcome by the same circumstances than that of one who is more intelligent or more mature. For this reason greater attention should be paid to such a defendant's situation and surroundings."

Curry v. State, 203 Ala. 239, 82 So. 489, 493.

And see the strong statement of the Alabama Court in **Bonner v. State**, 55 Ala. 242, 245, 246. It is not, however, in the statement of abstract principles but in their practical application that criminal procedures must be weighed against the challenge of due process.

In **Fikes v. Alabama**, ... U. S. ..., 77 S. Ct. 281, this Court reversed a conviction obtained through the use of confessions which this Court found were not voluntarily made. This Court stated:

> "We hold that the circumstances of pressure applied against the power of resistance of this petitioner, who cannot be deemed other than weak of will or mind, deprived him of due process of law."

This Court in the **Fikes** case held that the totality of circumstances required a reversal. The two most significant circumstances in the **Fikes** case were the weakness of will or mind of the defendant and the persistent questioning: Petitioner Blackburn's mental derangement was far greater than that of Fikes, and the sustained, uninterrupted questioning of Blackburn was twice as long as that of Fikes.

We submit that constitutional due process of law prohibits the use of a confession obtained from such a men-

tally deranged person as petitioner even if the confession was obtained without the vice of sustained questioning. "The law will not suffer a prisoner to be made the deluded instrument of his own conviction." 2 Hawkins, Pleas of the Crown, C. 46, Sec. 34, quoted with approval in **Watts v. Indiana**, 338 U. S. 49, 54. Certainly the combination of petitioner's mental incompetency and his sustained, prolonged interrogation under the circumstances of this case require that his conviction be reversed. **Fikes v. Alabama**, ... U. S. ..., 77 S. Ct. 281; **Stein v. New York**, 346 U. S. 156, 185; **Harris v. South Carolina**, 338 U. S. 68.

This Court has held repeatedly that a confession improperly admitted requires reversal regardless of other evidence of guilt. **Malinski v. New York**, 324 U. S. 401; **Brown v. Allen**, 344 U. S. 443, 475; **Stroble v. California**, 343 U. S. 181, 190; **Gallegos v. Nebraska**, 342 U. S. 55, 63; **Watts v. Indiana**, 338 U. S. 49. In this case, however, substantially the only evidence implicating petitioner was the alleged confession. No one identified petitioner as being at the scene of the crime. His conviction rested squarely and almost entirely on the alleged confession.

Such convictions as that of this petitioner are miscarriages of justice "of such gravity and magnitude that they cannot be expected to happen in an enlightened system of justice, or be tolerated if they do." **Stein v. New York**, 346 U. S. 156, 181. Every court in the land now knows the general constitutional requirement that a conviction may not be predicated on a confession involuntarily obtained. If the due process requirement does not have application for this insane prisoner, it is difficult to see how it could be an effective shield in any case. This Court has the high responsibility of giving meaning to the beautifully stated principle that in the administration of criminal justice in the United States an accused is protected from being made "the deluded instrument of his own conviction." **Watts**

v. Indiana, 338 U. S. 49, 54. "No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution —of whatever race, creed or persuasion." **Chambers v. Florida**, 309 U. S. 227, 241.

The decision of the Alabama courts that petitioner's confession was voluntary and admissible in evidence should be reversed.

Respectfully submitted,

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W. H. MITCHELL, JR.,

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TRUMAN HOBBS,

Counsel for Petitioner.